IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

And
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 6828 of 2004

Between:

M/s Praga Tools Limited, Kavadiguda, Secunderabad.

..... PETITIONER

AND

1 The Union of India, Rep. by its Secretary, Ministry of Industry,
(Department of Industrial Development), New Delhi - 110 011.
2 Customs, Excise & Service Tax Appellate Tribunal, WZB,Jai Centre, 3rd, 4th and 5th Floor,
34, P.D. Mello Road, Poona Street, Masjid Bandu (E), Mumbai - 400 009.
3 The Collector of Customs (Appeals), New Customs House, Ballard Estate,
Mumbai - 400038.
4 The Assistant Commissioner of Customs, 6(B), Contract Cell, 9th Floor, Annexe Building,
New Custom House, Ballard Estate, Mumbai - 400 038.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ or Order or Direction in the nature of a Writ declaring the order of the 4th respondent in Order-in-Original No. S/5-753/86-CC dt. 26-2-1977 as without jurisdiction, as illegal, unjust, arbitrary and violative of principles of natural justice and violative of the clarification and directive of the 1st respondent in letter No. 21558/Engg.Ind/86 dt. 5-9-1986 and to set aside the same, or alternatively, to set aside the order of the 2nd respondent in Appeal No, C/225/98 dated 10-12-2003 and the order of the 3rd respondent in Appeal No. 65/97 MCH dated 22-1-1997 in the interests of the justice, and to direct the 3rd respondent to hear the Appeal No. 65/97 without regard to the delay in filing and to dispose of the Appeal on merits,

Counsel for the Petitioner: MR.J.V.PRASAD

Counsel for the Respondent No.1 to 4: MR.A.RAJASHEKAR REDDY (SC FOR CG)

The Court made the following :

<u>Oral order</u>: (Per Hon'ble Mr. Justice Bilal Nazki)

Heard the learned counsel for the parties. Counter has been filed.

An order is passed by the Commissioner of Customs (appeals), Mumbai, declining to grant extension of time in presenting the appeal. The order of the Commissioner was challenged before the Customs, Excise & Service Tax Appellate Tribunal, West Regional Bench at Mumbai, by way of appeal provided under the Customs Act, 1962. That has also been dismissed. Both the remedies were exhausted at Mumbai. Now challenging these orders, the writ petition has been filed before this court at Hyderabad. Basically, the petitioner is aggrieved of the order passed by the Assistant Commissioner of Customs, Mumbai, dated 26-02-1996. The petitioner wants that the orders passed by the appellate authorities in appeal be set aside, and if that was not possible, alternatively, the order dated 26-02-1996 passed by the Assistant Commissioner of Customs, Mumbai should be quashed.

We fail to understand the logic behind such an argument. Against the basic order dated 26-02-1996, appeal is provided for, which was availed of by the petitioner, but beyond time. The order suffered in the appeal was again challenged before another appellate authority unsuccessfully. Now the petitioner cannot be allowed to turn around and be permitted to challenge the order dated 26-02-1996, after a lapse of eight (8) years in the High Court of A.P., at Hyderabad, and we are not expected to exercise our jurisdiction under Article 226 of the Constitution of India in this factual back ground.

Now coming to the orders passed by the appellate authorities, the first appellate authority did not condone the delay of seven (7) months sixteen (16) days on the ground that it had no power under Section 128 of the Customs Act, 1962. Three months period is provided for filing the appeals and the Collector (Appeals) is empowered to allow further period of three months for presenting the

appeal, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal, within the period of three months. In any case, the appeal cannot be presented before the Collector beyond six months. Therefore, in our view the order of the appellate authority cannot be faulted. On the same grounds, the second appellate authority dismissed the appeal. We have our own doubts whether the writ petition could be filed in this court at all, because the whole controversy has arisen at Mumbai and the cause of action to the petitioner has also arisen at Mumbai. But in view of the findings herein above, we do not settle that question.

The writ petition has no merits and is accordingly dismissed. No costs.

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BILAL NAZKI, J

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S. ANANDA REDDY, J

Dt. 03-08-2004

PVKS/KVH

To

1 The Secretary, the Union of India, Ministry of Industry,
(Department of Industrial Development), New Delhi - 110 011.
2 Customs, Excise & Service Tax Appellate Tribunal, WZB,Jai Centre, 3rd, 4th and 5th Floor,
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